IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1467 OF 2006

Mumtaz Ali Niyamat Ali Kazi & Ors. ..Petitioners

Vs.

Liyakatali N.Kazi & Ors. ..Respondents

Mr.R.M.Haridas i/b Mr.P.N.Joshi for the petitioners

Mr.Sachin U. Dhakephalkar for the respondents

CORAM : A.P.DESHPANDE, J

DATED : 22ND NOVEMBER, 2006

P.C.:

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. This petition is instituted by as many as 17 petitioners who claim to be the members of the trust by name Manmad Education Society. It is the case of the petitioners that they applied for membership of the trust sometime in the month of April / May, 1998 and they were granted valid membership in a meeting held on 22.10.2000. The

secretary of the society filed a change report before the Deputy Charity Commissioner under section 22 of the Bombay Public Trusts Act intimating the change in the names of the trustees of the Managing Committee of the trust. In the said proceedings, the validity of the meeting dt.22.10.2000 was called in question and incidently, an issue arose as to whether the present applicants are validly admitted as members of the trust.

3. The Deputy Charity Commissioner while rejecting the change report has held that the present petitioners were not validly and legally admitted to the membership of the trust. The reporting trustee has already filed an appeal against the order passed by the Deputy Charity Commissioner rejecting the change report before the Joint Charity Commissioner and the same is pending on the file of the Joint Charity Commissioner. The present petitioners moved an application purportedly under section 73A of the Bombay Public Trusts Act seeking permission to be joined as intervenors in the appeal by reiterating their

contention referred to hereinabove that they were validly admitted as members of the Trust / society and the finding recorded by Deputy Charity Commissioner about they not being the members of the society. The Joint Charity Commissioner has rejected the application for intervention moved by the petitioner under section 73A of the act and aggrieved thereby, the instant writ petition has been filed.

4. On the own saying of the petitioners in their application moved before the appellate authority seeking impleadment in the appeal, they claim to have made an application in the year 1998 and further claim to have been admitted to the membership of the trust / society in a meeting held on 22.10.2000. With these pleadings, it is obvious that the petitioners are claiming firstly to be persons having interest in the trust and secondly, as persons who are adversely affected by the orders passed by the Deputy Charity Commissioner.

5. The learned counsel for the respondents has submitted that as a matter of fact the present

petitioners were in substance represented before the Deputy Charity Commissioner, as the petitioners case of valid membership was being canvassed by the reporting trustee himself and the reporting trustee has failed to establish that the present petitioners were validly admitted to the membership of the society. If the submission made by the learned counsel for the respondents is taken to be correct, that the cause of the present petitioners was being canvased by the reporting trustee before the Deputy Charity Commissioner, then no prejudice can be caused to the petitioners if the petitioners are permitted to intervene in the matter and submit their own case, instead of they being represented by the reporting trustee.

6. Perusal of 73A of the Bombay Public Trusts Act reveals that in any proceeding under this act, any person having an interest in the public trust may be joined as party to such proceeding on an application made by such person. In the first place, the section refers to ’any proceedings’ under the act and the same would obviously include an appeal pending before the appellate authority.

The appellate authority while rejecting the application moved by the petitioners has recorded the reason for rejecting the application by holding that the present petitioners are not persons having an interest in the 'public trust', hence, they are not permitted to be impleaded.

7. Turning to the definition, s.2 subsection 10 of Bombay Public Trusts Act defines a 'person having an interest'. It is clear that the definition is inclusive definition and goes to read thus 'a person having an interest (includes)-

a) ...
b) ...
c) ...
d) ...
e) ...

The definition is not exhaustive.

8. On the averments made in the application by the petitioners, they claim to have made an application for membership of the trust and further

claims to have been validly admitted to membership of the Trust and hence have the locus. The court has to go by the averments made in the application and if that be so, the petitioners do satisfy the conditions laid down under section 73A of the Act. Even otherwise I do not feel that any prejudice will be caused to the respondents herein / respondents before the appellate authority if the petitioners are permitted to intervene in the matter, more so, when the learned counsel for the petitioners categorically states that the petitioners will not claim remand of the case from the appellate authority, for leading any evidence.

9. The learned counsel for the petitioners restricts his right only to place on record documents and make submissions in the matter. In view of this statement made by the learned counsel, the present petition is partly allowed. The order passed by the Joint Charity Commissioner is quashed and set aside. The application moved by the petitioners for impleadment under section 73A of the Act is allowed, subject to the statement made by the learned counsel referred to hereinabove.

Rule made absolute.

10. Both the learned counsel for the parties submit that the appeal is pending for quite some time and, hence, seeks a direction against the appellate authority to expeditiously decide the appeal. Hence, I direct the Joint Charity Commissioner to decide the appeal as expeditiously as possible and at any rate within 6 months from today.

(SHRI A.P.DESHPANDE, J)